

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Darby, et al.

H.B. No. 2174

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the regulation of motor fuel quality and motor fuel  
3 metering devices.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 13.001(a), Agriculture Code, is amended  
6 by adding Subdivision (1-a) to read as follows:

7 (1-a) "Motor fuel metering device" means a commercial  
8 weighing or measuring device used for motor fuel sales with a  
9 maximum flow rate of 20 gallons per minute or less.

10 SECTION 2. Section 13.029, Agriculture Code, is amended to  
11 read as follows:

12 Sec. 13.029. EXEMPTION OF WEIGHING OR MEASURING DEVICES.

13 (a) The department by rule may exempt a weighing or measuring device  
14 from a requirement established by this chapter if the department  
15 determines that imposing or enforcing the requirement:

16 (1) is not cost-effective for the department;  
17 (2) is not feasible with current resources or  
18 standards; or

19 (3) will not substantially benefit or protect  
20 consumers.

21 (b) A motor fuel metering device is exempt from the  
22 requirements of this chapter if the motor fuel metering device is  
23 not used to:

24 (1) calculate the amount of fuel sold in a commercial

1 transaction; or

2 (2) compute the charge for service.

3 SECTION 3. Section 13.101, Agriculture Code, is amended by  
4 adding Subsection (e) to read as follows:

5 (e) This section does not apply to a motor fuel metering  
6 device.

7 SECTION 4. Section 13.1011, Agriculture Code, is amended by  
8 adding Subsection (e) to read as follows:

9 (e) This section does not apply to a motor fuel metering  
10 device.

11 SECTION 5. Subchapter C, Chapter 13, Agriculture Code, is  
12 amended by adding Sections 13.1015, 13.1016, and 13.1017 to read as  
13 follows:

14 Sec. 13.1015. INSPECTION OF MOTOR FUEL METERING DEVICES.

15 (a) Unless a motor fuel metering device is exempt from the  
16 application of this section by department rule, a motor fuel  
17 metering device shall be inspected, tested, and calibrated for  
18 correctness by a license holder under Subchapter I at least once  
19 every two years if the device is:

20 (1) kept for sale, sold, or used by a proprietor,  
21 agent, lessee, or employee in proving the measure of motor fuel; or

22 (2) purchased, offered, or submitted by a proprietor,  
23 agent, lessee, or employee for sale, hire, or award.

24 (b) Inspection, testing, and calibration under this section  
25 must be performed by a license holder under Subchapter I under  
26 contract with the operator or user of the motor fuel metering  
27 device.

1       Sec. 13.1016. REQUIRED REGISTRATION OF MOTOR FUEL METERING  
2 DEVICES. (a) Unless a motor fuel metering device is exempt from  
3 the application of this section by department rule, a person who  
4 owns or operates a motor fuel metering device shall register the  
5 device with the department before using the device for a commercial  
6 transaction.

7       (b) An application for a device registration must:

8           (1) be submitted to the department on a form  
9 prescribed by the department;

10          (2) be accompanied by any other document or form  
11 required by the department;

12          (3) include the registration fee required under  
13 Section 13.1151; and

14          (4) include documentation of compliance with Section  
15 13.1015.

16       (c) A registration under this section is valid for one year  
17 unless a different period is established by department rule. The  
18 registration must be renewed at or before the end of each  
19 registration period and the application for renewal must include  
20 documentation of compliance with Section 13.1015.

21       (d) If a person fails to register or renew a registration as  
22 required by this section, the department may not issue a  
23 certificate to operate the motor fuel metering device. The  
24 department shall issue the certificate when the operator submits to  
25 the department the items required by Subsection (b).

26       (e) The department may assess a late fee if the registration  
27 of one or more devices located on a premises is renewed after the

1 end of the registration period because of a registration error,  
2 including one or more devices not properly registered, failure to  
3 register the correct type of device, or failure to timely register a  
4 previously registered device. The amount of the penalty may not  
5 exceed \$250 per year for the premises.

6 Sec. 13.1017. COMPLAINTS REGARDING MOTOR FUEL METERING  
7 DEVICES. (a) The department shall receive complaints regarding  
8 motor fuel metering devices.

9 (b) After receiving a complaint regarding a motor fuel  
10 metering device, the department shall determine the date the device  
11 was last inspected under Section 13.1015 and the number of  
12 complaints received by the department in the previous 12 months  
13 regarding motor fuel metering devices at the premises where the  
14 device subject to the complaint is located.

15 (c) The department shall notify the person who last  
16 registered the motor fuel metering device and take no further  
17 action on the complaint if:

18 (1) the motor fuel metering device was last inspected  
19 not more than 18 months before the date the complaint is received;  
20 and

21 (2) the department received not more than two  
22 complaints in the previous 12 months regarding motor fuel metering  
23 devices at the premises where the device is located.

24 (d) The department shall notify the person who last  
25 registered the motor fuel metering device and require the device to  
26 be inspected by a license holder under Section 13.1015 not later  
27 than one month after the notification date if:

1           (1) the motor fuel metering device was last inspected  
2 more than 18 months before the date the complaint is received; or

3           (2) the department received at least three complaints  
4 in the previous 12 months regarding motor fuel metering devices at  
5 the premises where the device is located.

6           (e) The operator or user of a motor fuel metering device who  
7 fails to have the device inspected in the time required by  
8 Subsection (d) is subject to an administrative penalty in the  
9 amount of \$250.

10           SECTION 6. Section 13.114, Agriculture Code, is amended to  
11 read as follows:

12           Sec. 13.114. TOLERANCES. The department shall establish  
13 specifications and tolerances for commercial weighing or measuring  
14 devices used in this state. The specifications and tolerances  
15 shall be similar to those recommended by the National Institute of  
16 Standards and Technology, except that the specifications and  
17 tolerances for motor fuel metering devices shall be the same as  
18 those recommended by the National Institute of Standards and  
19 Technology.

20           SECTION 7. Section 13.1151, Agriculture Code, is amended to  
21 read as follows:

22           Sec. 13.1151. FEES FOR REGISTRATION AND INSPECTION. (a)  
23 The department may charge the owner or operator of a weighing or  
24 measuring device a fee, as provided by department rule, to recover  
25 the costs of registration and inspection of a weighing or measuring  
26 device required to be registered or inspected under this chapter.

27           (b) Notwithstanding any other law, the department may not in

1 a state fiscal biennium increase a fee under Subsection (a) for a  
2 motor fuel metering device by an amount that exceeds five percent of  
3 the amount of the fee at the end of the preceding state fiscal  
4 biennium.

5 SECTION 8. Section 17.072, Agriculture Code, is amended by  
6 amending Subsections (a) and (b) and adding Subsection (a-1) to  
7 read as follows:

8 (a) The department or a representative of the department may  
9 collect samples and conduct testing at any location where motor  
10 fuel is kept, transferred, sold, or offered for sale, to verify that  
11 the motor fuel complies with the minimum standards required by  
12 Section 17.071.

13 (a-1) The collection of samples and conducting of testing at  
14 a dealer's location must be performed by a license holder under  
15 Subchapter I, Chapter 13, under contract with the dealer. The  
16 license holder is considered a representative of the department for  
17 purposes of this section.

18 (b) On arriving at a facility to conduct testing under  
19 Subsection (a), a representative of the department shall notify the  
20 owner or manager of the facility of the representative's presence  
21 and purpose. The department representative shall follow the most  
22 recent applicable procedures specified by ASTM International  
23 Standard D4057, D4177, D5842, or D5854 for the collection,  
24 sampling, and handling of fuel to prepare for laboratory analysis.

25 SECTION 9. Section 17.073(a), Agriculture Code, is amended  
26 to read as follows:

27 (a) If the department has laboratory results to confirm

1 ~~[reason to believe]~~ that motor fuel is in violation of this chapter  
2 or a rule adopted under this chapter, or that the motor fuel is  
3 being sold or offered for sale in a manner that violates this  
4 chapter or a rule adopted under this chapter, the department may:

5           (1) issue and enforce a written order to stop the sale  
6 of the motor fuel;

7           (2) place on a device used to dispense the motor fuel a  
8 tag or other mark with the words "Out of Order"; or

9           (3) stop the sale of the motor fuel and mark a device  
10 used to dispense the motor fuel as out of order.

11           SECTION 10. This Act takes effect September 1, 2017.

ADOPTED

MAY 23 2017

*Lotay Spaw*  
Secretary of the Senate

By: Darby Nichols

H.B. No. 2174

Substitute the following for H.B. No. 2174:

By: Robert Lee Nichols

C.S. H.B. No. 2174

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3 metering devices; authorizing fees.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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18 standards; or

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20 consumers.

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22 requirements of this chapter if the motor fuel metering device is  
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1 transaction; or

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20 (1) kept for sale, sold, or used by a proprietor,  
21 agent, lessee, or employee in proving the measure of motor fuel; or

22 (2) purchased, offered, or submitted by a proprietor,  
23 agent, lessee, or employee for sale, hire, or award.

24 (b) Inspection, testing, and calibration under this section  
25 must be performed by a license holder under Subchapter I under  
26 contract with the operator or user of the motor fuel metering  
27 device.

1           Sec. 13.1016. REQUIRED REGISTRATION OF MOTOR FUEL METERING  
2 DEVICES. (a) Unless a motor fuel metering device is exempt from  
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10                   (2) be accompanied by any other document or form  
11 required by the department;

12                   (3) include the registration fee required under  
13 Section 13.1151; and

14                   (4) include documentation of compliance with Section  
15 13.1015.

16           (c) A registration under this section is valid for one year  
17 unless a different period is established by department rule. The  
18 registration must be renewed at or before the end of each  
19 registration period and the application for renewal must include  
20 documentation of compliance with Section 13.1015.

21           (d) If a person fails to register or renew a registration as  
22 required by this section, the department may not issue a  
23 certificate to operate the motor fuel metering device. The  
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26           (e) The department may assess a late fee if the registration  
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22 (2) the department received not more than two  
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24 devices at the premises where the device is located.

25 (d) The department shall notify the person who last  
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1 than one month after the notification date if:

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20 The department may charge the owner or operator of a weighing or  
21 measuring device a fee, as provided by department rule, to recover  
22 the costs of registration and inspection of a weighing or measuring  
23 device required to be registered or inspected under this chapter.

24 (b) Notwithstanding any other law, the department may not in  
25 a state fiscal biennium increase a fee under Subsection (a) for a  
26 motor fuel metering device by an amount that exceeds 10 percent of  
27 the amount of the fee at the end of the preceding state fiscal

1 biennium.

2 SECTION 8. Section 17.072, Agriculture Code, is amended by  
3 amending Subsections (a) and (b) and adding Subsection (a-1) to  
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5 (a) The department or a representative of the department may  
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11 a dealer's location must be performed by a license holder under  
12 Subchapter I, Chapter 13, under contract with the dealer. The  
13 license holder is considered a representative of the department for  
14 purposes of this section.

15 (b) On arriving at a facility to conduct testing under  
16 Subsection (a), a representative of the department shall notify the  
17 owner or manager of the facility of the representative's presence  
18 and purpose. The department representative shall follow the most  
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24 (a) If the department has laboratory results to confirm  
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26 or a rule adopted under this chapter, or that the motor fuel is  
27 being sold or offered for sale in a manner that violates this

1 chapter or a rule adopted under this chapter, the department may:

2                   (1) issue and enforce a written order to stop the sale  
3 of the motor fuel;

4                   (2) place on a device used to dispense the motor fuel a  
5 tag or other mark with the words "Out of Order"; or

6                   (3) stop the sale of the motor fuel and mark a device  
7 used to dispense the motor fuel as out of order.

8           SECTION 10. This Act takes effect September 1, 2017.

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 24, 2017**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** HB2174 by Darby (Relating to the regulation of motor fuel quality and motor fuel metering devices; authorizing fees.), **As Passed 2nd House**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2174, As Passed 2nd House: an impact of \$0 through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	\$0
2019	\$0
2020	\$0
2021	\$0
2022	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Probable Savings/(Cost) from <i>Appropriated Receipts</i> 666	Probable Revenue Gain/(Loss) from <i>Appropriated Receipts</i> 666
2018	\$137,723	(\$137,723)	(\$3,651,837)	\$3,651,837
2019	\$137,723	(\$137,723)	(\$3,651,837)	\$3,651,837
2020	\$137,723	(\$137,723)	(\$3,651,837)	\$3,651,837
2021	\$137,723	(\$137,723)	(\$3,651,837)	\$3,651,837
2022	\$137,723	(\$137,723)	(\$3,651,837)	\$3,651,837

Fiscal Year	Change in Number of State Employees from FY 2017
2018	(8.0)
2019	(8.0)
2020	(8.0)
2021	(8.0)
2022	(8.0)

**Fiscal Analysis**

The bill would amend Texas Agriculture Code, Chapter 13, to define a "motor fuel metering device" and to require that inspection, testing, and calibration of motor fuel metering devices be performed by a license holder under contract with the operator or user of the motor fuel metering device. The bill would exempt the motor fuel metering devices from inspection and registration requirements for weighting and measuring devices. The bill would add inspection requirements for motor fuel metering devices, requiring that the devices be inspected at least once every two years. The bill would also add annual registration requirements for motor fuel metering devices; applications for registration must include a registration fee required by Texas Agriculture Code, Section 13.1151 to recover the costs of registration and inspection of the motor fuel metering devices. TDA would be prohibited from increasing this fee in a state fiscal biennium by an amount that exceeds ten percent of the amount of the fee at the end of the preceding state fiscal biennium. The bill would authorize a registration late fee to be assessed by TDA, not to exceed \$50 per device and \$500 per year for a premise. The bill would require that the specifications and tolerances for motor fuel metering devices be the same as those recommended by the National Institute of Standards and Technology. TDA would be required to receive complaints regarding motor fuel metering devices, to notify the person who last registered the device and, under certain circumstances defined by the bill, to require the device to be inspected by a license holder.

The bill would amend Texas Agriculture Code, Chapter 17, to require that sampling and testing activities of certain fuel mixtures be performed by a license holder under contract with the dealer. The bill would amend testing and sampling requirements to allow a contracted entity to perform them, and would require the contracted entity to follow certain collection, sampling, and handling procedures. Stop-sale orders or shutdown of dispensing devices would have to be based on laboratory results confirming a violation.

The bill would take effect September 1, 2017.

**Methodology**

TDA estimates that approximately 14.0 FTEs would be eliminated from the Fuel Quality program and the Weights and Measures program as a result of the privatization of certain inspection and registration activities. TDA estimates that approximately 8.0 of these FTEs are currently funded through cost-recovered General Revenue in the Weights and Measures program and have a total cost of \$477,315 for salaries and other benefits expenses each fiscal year. This analysis assumes that the savings associated with these 8.0 FTEs would be offset by a reduction in fee revenue deposited to the credit of the General Revenue fund. TDA estimates that 6.0 of the FTEs are currently funded through Appropriated Receipts in the Fuel Quality program and have a total cost of \$357,986 for salaries and other benefits expenses each fiscal year. This analysis assumes that the savings associated with these 6.0 FTEs would be offset by a reduction in fee revenue deposited as Appropriated Receipts. In addition, there is an indeterminate amount of savings associated with other operating expenses and miscellaneous administrative expenses as a result of elimination of

these functions.

TDA estimates that in order to verify the compliance of an increased number of license holders, 6.0 additional FTEs would be required (one Manager and five Program Specialists). This estimate assumes that the FTEs would be partially funded by cost recovery General Revenue in the Weights and Measures program and partially by Appropriated Receipts in the Fuel Quality program. The cost of the FTEs funded by General Revenue is estimated by this analysis to total \$339,592 each fiscal year; this analysis assumes that these costs would be offset by an increase in fee revenue deposited to the credit of the General Revenue fund. The cost of the FTEs funded by Appropriated Receipts is estimated by this analysis to total \$172,598 each fiscal year; this analysis assumes that these costs would be offset by an increase in fee revenue deposited as Appropriated Receipts.

TDA estimates that the bill's requirement that stop-sale orders or shutdown of dispensing devices be based on laboratory results confirming a violation would require increased laboratory analysis of fuel quality samples. This analysis assumes that the cost of the laboratory analysis of samples would be borne by TDA instead of the dealer. TDA estimates that 20,527 routine fuel quality samples would be required to be tested per biennium under the provisions of the bill, and 1,400 fuel quality samples are tested as a result of complaints per biennium. Testing each fuel quality sample costs \$350, according to the agency, for a total biennial cost of \$7,674,450, or \$3,837,225 each fiscal year. This analysis assumes that the cost of the contract would be recovered by fees as Appropriated Receipts in the Fuel Quality program each fiscal year.

#### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 551 Department of Agriculture

**LBB Staff:** UP, SD, MSO, AG, MW, CL

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 18, 2017**

**TO:** Honorable Robert Nichols, Chair, Senate Committee on Transportation

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2174** by Darby (Relating to the regulation of motor fuel quality and motor fuel metering devices; authorizing fees.), **Committee Report 2nd House, Substituted**

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The bill would take effect September 1, 2017.

## Methodology

TDA estimates that approximately 14.0 FTEs would be eliminated from the Fuel Quality program and the Weights and Measures program as a result of the privatization of certain inspection and registration activities. TDA estimates that approximately 8.0 of these FTEs are currently funded through cost-recovered General Revenue in the Weights and Measures program and have a total cost of \$477,315 for salaries and other benefits expenses each fiscal year. This analysis assumes that the savings associated with these 8.0 FTEs would be offset by a reduction in fee revenue deposited to the credit of the General Revenue fund. TDA estimates that 6.0 of the FTEs are currently funded through Appropriated Receipts in the Fuel Quality program and have a total cost of \$357,986 for salaries and other benefits expenses each fiscal year. This analysis assumes that the savings associated with these 6.0 FTEs would be offset by a reduction in fee revenue deposited as Appropriated Receipts. In addition, there is an indeterminate amount of savings associated with other operating expenses and miscellaneous administrative expenses as a result of elimination of

these functions.

TDA estimates that in order to verify the compliance of an increased number of license holders, 6.0 additional FTEs would be required (one Manager and five Program Specialists). This estimate assumes that the FTEs would be partially funded by cost recovery General Revenue in the Weights and Measures program and partially by Appropriated Receipts in the Fuel Quality program. The cost of the FTEs funded by General Revenue is estimated by this analysis to total \$339,592 each fiscal year; this analysis assumes that these costs would be offset by an increase in fee revenue deposited to the credit of the General Revenue fund. The cost of the FTEs funded by Appropriated Receipts is estimated by this analysis to total \$172,598 each fiscal year; this analysis assumes that these costs would be offset by an increase in fee revenue deposited as Appropriated Receipts.

TDA estimates that the bill's requirement that stop-sale orders or shutdown of dispensing devices be based on laboratory results confirming a violation would require increased laboratory analysis of fuel quality samples. This analysis assumes that the cost of the laboratory analysis of samples would be borne by TDA instead of the dealer. TDA estimates that 20,527 routine fuel quality samples would be required to be tested per biennium under the provisions of the bill, and 1,400 fuel quality samples are tested as a result of complaints per biennium. Testing each fuel quality sample costs \$350, according to the agency, for a total biennial cost of \$7,674,450, or \$3,837,225 each fiscal year. This analysis assumes that the cost of the contract would be recovered by fees as Appropriated Receipts in the Fuel Quality program each fiscal year.

#### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 551 Department of Agriculture  
**LBB Staff:** UP, MSO, AG, MW, CL

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 7, 2017**

**TO:** Honorable Robert Nichols, Chair, Senate Committee on Transportation

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** HB2174 by Darby (Relating to the regulation of motor fuel quality and motor fuel metering devices.), **As Engrossed**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2174, As Engrossed: an impact of \$0 through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	\$0
2019	\$0
2020	\$0
2021	\$0
2022	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i>	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i>	Probable Savings/(Cost) from <i>Appropriated Receipts</i>	Probable Revenue Gain/(Loss) from <i>Appropriated Receipts</i>
	1	1	666	666
2018	\$137,723	(\$137,723)	(\$3,651,837)	\$3,651,837
2019	\$137,723	(\$137,723)	(\$3,651,837)	\$3,651,837
2020	\$137,723	(\$137,723)	(\$3,651,837)	\$3,651,837
2021	\$137,723	(\$137,723)	(\$3,651,837)	\$3,651,837
2022	\$137,723	(\$137,723)	(\$3,651,837)	\$3,651,837

Fiscal Year	Change in Number of State Employees from FY 2017
2018	(8.0)
2019	(8.0)
2020	(8.0)
2021	(8.0)
2022	(8.0)

## Fiscal Analysis

The bill would amend Texas Agriculture Code, Chapter 13, to define a "motor fuel metering device" and to require that inspection, testing, and calibration of motor fuel metering devices be performed by a license holder under contract with the operator or user of the motor fuel metering device. The bill would exempt the motor fuel metering devices from inspection and registration requirements for weighting and measuring devices. The bill would add inspection requirements for motor fuel metering devices, requiring that the devices be inspected at least once every two years. The bill would also add annual registration requirements for motor fuel metering devices; applications for registration must include a registration fee required by Texas Agriculture Code, Section 13.1151 to recover the costs of registration and inspection of the motor fuel metering devices. TDA would be prohibited from increasing this fee in a state fiscal biennium by an amount that exceeds five percent of the amount of the fee at the end of the preceding state fiscal biennium. The bill would authorize a registration late fee to be assessed by TDA, not to exceed \$250 per year for a premise. The bill would require that the specifications and tolerances for motor fuel metering devices be the same as those recommended by the National Institute of Standards and Technology. TDA would be required to receive complaints regarding motor fuel metering devices, to notify the person who last registered the device and, under certain circumstances defined by the bill, to require the device to be inspected by a license holder. If this inspection does not occur, the operator or user of the device would be subject to an administrative penalty of \$250.

The bill would amend Texas Agriculture Code, Chapter 17, to require that sampling and testing activities of certain fuel mixtures be performed by a license holder under contract with the dealer. The bill would amend testing and sampling requirements to allow a contracted entity to perform them, and would require the contracted entity to follow certain collection, sampling, and handling procedures. Stop-sale orders or shutdown of dispensing devices would have to be based on laboratory results confirming a violation.

The bill would take effect September 1, 2017.

## Methodology

TDA estimates that approximately 14.0 FTEs would be eliminated from the Fuel Quality program and the Weights and Measures program as a result of the privatization of certain inspection and registration activities. TDA estimates that approximately 8.0 of these FTEs are currently funded through cost-recovered General Revenue in the Weights and Measures program and have a total cost of \$477,315 for salaries and other benefits expenses each fiscal year. This analysis assumes that the savings associated with these 8.0 FTEs would be offset by a reduction in fee revenue deposited to the credit of the General Revenue fund. TDA estimates that 6.0 of the FTEs are currently funded through Appropriated Receipts in the Fuel Quality program and have a total cost of \$357,986 for salaries and other benefits expenses each fiscal year. This analysis assumes that the savings associated with these 6.0 FTEs would be offset by a reduction in fee revenue deposited as Appropriated Receipts. In addition, there is an indeterminate amount of savings associated with

other operating expenses and miscellaneous administrative expenses as a result of elimination of these functions.

TDA estimates that in order to verify the compliance of an increased number of license holders, 6.0 additional FTEs would be required (one Manager and five Program Specialists). This estimate assumes that the FTEs would be partially funded by cost recovery General Revenue in the Weights and Measures program and partially by Appropriated Receipts in the Fuel Quality program. The cost of the FTEs funded by General Revenue is estimated by this analysis to total \$339,592 each fiscal year; this analysis assumes that these costs would be offset by an increase in fee revenue deposited to the credit of the General Revenue fund. The cost of the FTEs funded by Appropriated Receipts is estimated by this analysis to total \$172,598 each fiscal year; this analysis assumes that these costs would be offset by an increase in fee revenue deposited as Appropriated Receipts.

TDA estimates that the bill's requirement that stop-sale orders or shutdown of dispensing devices be based on laboratory results confirming a violation would require increased laboratory analysis of fuel quality samples. This analysis assumes that the cost of the laboratory analysis of samples would be borne by TDA instead of the dealer. TDA estimates that 20,527 routine fuel quality samples would be required to be tested per biennium under the provisions of the bill, and 1,400 fuel quality samples are tested as a result of complaints per biennium. Testing each fuel quality sample costs \$350, according to the agency, for a total biennial cost of \$7,674,450, or \$3,837,225 each fiscal year. This analysis assumes that the cost of the contract would be recovered by fees as Appropriated Receipts in the Fuel Quality program each fiscal year.

#### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 551 Department of Agriculture

**LBB Staff:** UP, AG, MW, MSO, CL

**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**April 19, 2017**

**TO:** Honorable John Kuempel, Chair, House Committee on Licensing & Administrative Procedures

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** **HB2174** by Darby (Relating to the regulation of motor fuel quality and motor fuel metering devices.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2174, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	\$0
2019	\$0
2020	\$0
2021	\$0
2022	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i>	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i>	Probable Savings/(Cost) from <i>Appropriated Receipts</i>	Probable Revenue Gain/(Loss) from <i>Appropriated Receipts</i>
	1	1	666	666
2018	\$137,723	(\$137,723)	(\$3,651,837)	\$3,651,837
2019	\$137,723	(\$137,723)	(\$3,651,837)	\$3,651,837
2020	\$137,723	(\$137,723)	(\$3,651,837)	\$3,651,837
2021	\$137,723	(\$137,723)	(\$3,651,837)	\$3,651,837
2022	\$137,723	(\$137,723)	(\$3,651,837)	\$3,651,837

Fiscal Year	Change in Number of State Employees from FY 2017
2018	(8.0)
2019	(8.0)
2020	(8.0)
2021	(8.0)
2022	(8.0)

## Fiscal Analysis

The bill would amend Texas Agriculture Code, Chapter 13, to define a "motor fuel metering device" and to require that inspection, testing, and calibration of motor fuel metering devices be performed by a license holder under contract with the operator or user of the motor fuel metering device. The bill would exempt the motor fuel metering devices from inspection and registration requirements for weighting and measuring devices. The bill would add inspection requirements for motor fuel metering devices, requiring that the devices be inspected at least once every two years. The bill would also add annual registration requirements for motor fuel metering devices; applications for registration must include a registration fee required by Texas Agriculture Code, Section 13.1151 to recover the costs of registration and inspection of the motor fuel metering devices. TDA would be prohibited from increasing this fee in a state fiscal biennium by an amount that exceeds five percent of the amount of the fee at the end of the preceding state fiscal biennium. The bill would authorize a registration late fee to be assessed by TDA, not to exceed \$250 per year for a premise. The bill would require that the specifications and tolerances for motor fuel metering devices be the same as those recommended by the National Institute of Standards and Technology.

The bill would amend Texas Agriculture Code, Chapter 17, to require that sampling and testing activities of certain fuel mixtures be performed by a license holder under contract with the dealer. The bill would amend testing and sampling requirements to allow a contracted entity to perform them, and would require the contracted entity to follow certain collection, sampling, and handling procedures. Stop-sale orders or shutdown of dispensing devices would have to be based on laboratory results confirming a violation.

The bill would take effect September 1, 2017.

## Methodology

TDA estimates that approximately 14.0 FTEs would be eliminated from the Fuel Quality program and the Weights and Measures program as a result of the privatization of certain inspection and registration activities. TDA estimates that approximately 8.0 of these FTEs are currently funded through cost-recovered General Revenue in the Weights and Measures program and have a total cost of \$477,315 for salaries and other benefits expenses each fiscal year. This analysis assumes that the savings associated with these 8.0 FTEs would be offset by a reduction in fee revenue deposited to the credit of the General Revenue fund. TDA estimates that 6.0 of the FTEs are currently funded through Appropriated Receipts in the Fuel Quality program and have a total cost of \$357,986 for salaries and other benefits expenses each fiscal year. This analysis assumes that the savings associated with these 6.0 FTEs would be offset by a reduction in fee revenue deposited as Appropriated Receipts. In addition, there is an indeterminate amount of savings associated with other operating expenses and miscellaneous administrative expenses as a result of elimination of these functions.

TDA estimates that in order to verify the compliance of an increased number of license holders,

6.0 additional FTEs would be required (one Manager and five Program Specialists). This estimate assumes that the FTEs would be partially funded by cost recovery General Revenue in the Weights and Measures program and partially by Appropriated Receipts in the Fuel Quality program. The cost of the FTEs funded by General Revenue is estimated by this analysis to total \$339,592 each fiscal year; this analysis assumes that these costs would be offset by an increase in fee revenue deposited to the credit of the General Revenue fund. The cost of the FTEs funded by Appropriated Receipts is estimated by this analysis to total \$172,598 each fiscal year; this analysis assumes that these costs would be offset by an increase in fee revenue deposited as Appropriated Receipts.

TDA estimates that the bill's requirement that stop-sale orders or shutdown of dispensing devices be based on laboratory results confirming a violation would require increased laboratory analysis of fuel quality samples. This analysis assumes that the cost of the laboratory analysis of samples would be borne by TDA instead of the dealer. TDA estimates that 20,527 routine fuel quality samples would be required to be tested per biennium under the provisions of the bill, and 1,400 fuel quality samples are tested as a result of complaints per biennium. Testing each fuel quality sample costs \$350, according to the agency, for a total biennial cost of \$7,674,450, or \$3,837,225 each fiscal year. This analysis assumes that the cost of the contract would be recovered by fees as Appropriated Receipts in the Fuel Quality program each fiscal year.

#### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 551 Department of Agriculture

**LBB Staff:** UP, CL, MW, MSO

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**April 10, 2017**

**TO:** Honorable John Kuempel, Chair, House Committee on Licensing & Administrative Procedures

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2174** by Darby (Relating to the regulation of motor fuel quality and motor fuel metering devices.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2174, As Introduced: an impact of \$0 through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	\$0
2019	\$0
2020	\$0
2021	\$0
2022	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable (Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain from <i>General Revenue Fund</i> 1	Probable Revenue Gain from <i>Appropriated Receipts</i> 666	Probable Revenue (Loss) from <i>Appropriated Receipts</i> 666
2018	(\$4,992,805)	\$4,992,805	\$238,737	(\$238,737)
2019	(\$4,992,805)	\$4,992,805	\$238,737	(\$238,737)
2020	(\$4,992,805)	\$4,992,805	\$238,737	(\$238,737)
2021	(\$4,992,805)	\$4,992,805	\$238,737	(\$238,737)
2022	(\$4,992,805)	\$4,992,805	\$238,737	(\$238,737)

<b>Fiscal Year</b>	<b>Change in Number of State Employees from FY 2017</b>
2018	(10.0)
2019	(10.0)
2020	(10.0)
2021	(10.0)
2022	(10.0)

## **Fiscal Analysis**

The bill would amend Texas Agriculture Code, Chapter 13, to define a "motor fuel metering device" and to require the Texas Department of Agriculture (TDA) to contract with license holders to perform required motor fuel metering device registration and inspection activities. The bill would exempt the motor fuel metering devices from inspection and registration requirements for weighting and measuring devices. The bill would add inspection requirements for motor fuel metering devices, requiring that the devices be inspected at least once every two years. The bill would also add annual registration requirements for motor fuel metering devices; applications for registration must include a registration fee required by Texas Agriculture Code, Section 13.1151 to recover the costs of registration and inspection of the motor fuel metering devices. The bill would require that the specifications and tolerances for motor fuel metering devices be the same as those recommended by the National Institute of Standards and Technology.

The bill would amend Texas Agriculture Code, Chapter 17, to require TDA to contract with license holders to perform activities related to the sale and regulation of certain fuel mixtures. The bill would amend testing and sampling requirements to allow a contracted entity to perform them, and would require the contracted entity to follow certain collection, sampling, and handling procedures. Stop-sale orders or shutdown of dispensing devices would have to be based on laboratory results confirming a violation.

The bill would take effect September 1, 2017.

## **Methodology**

TDA estimates that approximately 14.0 FTEs would be eliminated from the Fuel Quality program and the Weights and Measures program as a result of the privatization of certain inspection and registration activities. TDA estimates that approximately 8.0 of these FTEs are currently funded through cost-recovered General Revenue in the Weights and Measures program and have a total cost of \$477,315 for salaries and other benefits expenses each fiscal year. This analysis assumes that the savings associated with these 8.0 FTEs would be offset by a reduction in fee revenue deposited to the credit of the General Revenue Fund. TDA estimates that 6.0 of the FTEs are currently funded through Appropriated Receipts in the Fuel Quality program and have a total cost of \$357,986 for salaries and other benefits expenses each fiscal year. This analysis assumes that the savings associated with these 6.0 FTEs would be offset by a reduction in fee revenue deposited as Appropriated Receipts. In addition, there is an indeterminate amount of savings associated with other operating expenses and miscellaneous administrative expenses as a result of elimination of these functions.

TDA estimates that implementing and overseeing the contract required by the bill would require 4.0 additional FTEs, with approximately 2.7 of these FTEs funded by cost recovery General Revenue in the Weights and Measures program and 1.3 of the FTEs funded by Appropriated Receipts in the Fuel Quality program. The 2.7 FTEs funded by cost recovery General Revenue are

estimated by TDA to have a total cost of \$232,895 each fiscal year; the 1.3 FTEs funded by Appropriated Receipts are estimated by TDA to have total cost of \$119,250.

TDA estimates that license service companies charge a rate of \$75 per hour plus a \$45 trip charge for travel. A typical location selling retail motor fuel has an average of 20 meters in operation, and that approximately 1.5 hours of inspection time would be required to inspect these devices, according to the agency. The fuel quality sample charge is \$2.13 per meter. TDA therefore estimates that the average cost of inspection at a typical location would total approximately \$200 per location, or \$10 per meter. The number of meters TDA estimates the contracted service would be required to inspect every two years, as required by the bill, is 280,000 meters. The cost of these inspections is estimated to total \$2,800,000 per biennium, or \$1,400,000 each fiscal year.

The bill would also require that the fuel quality samples be tested routinely and as a result of complaints by the contracted entity. TDA estimates that 20,527 routine samples would be required to be tested per biennium under the provisions of the bill, and 1,400 samples are tested as result of complaints per biennium. Testing each sample costs \$350, according to the agency, for a total biennial cost of \$7,674,450, or \$3,837,225 each fiscal year.

Metering services and laboratory testing activities would total \$5,237,225 each fiscal year. This analysis assumes that the cost of the contract would be recovered by fees deposited to the credit of the General Revenue Fund each fiscal year.

#### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 551 Department of Agriculture  
**LBB Staff:** UP, CL, MW, MSO